

TRIAL COURT COLLECTION POLICY GUIDELINES

TABLE OF CONTENTS

INTRODUCTION	1
PAYMENT POLICIES	1
ENFORCEMENT	3
ADMINISTRATION	4
DISCHARGE OF DEBT	5
*** <i>SAMPLE POLICY FORMAT</i> ***	7
*** <i>SAMPLE COLLECTIONS PROCESS FLOWCHART</i> ***	9
SCAO MODEL WRITE-OFF POLICY	10

INTRODUCTION

The following guidelines for establishing collections policies are based on the Michigan Trial Court Collections Standards and similar procedures utilized by successful courts throughout the country. Written collections policies contribute toward more effective court collections by ensuring that all participants have a clear understanding of their respective roles in the collections process and that collections activities are conducted consistently. These guidelines are intended to assist court managers in developing appropriate policies for their own courts that will improve the integrity and effectiveness of the collections process.

PAYMENT POLICIES

Payment Due at Time of Assessment, Exceptions; Showing of Good Cause

Pursuant to MCR 1.110, the court will expect payment at the time of assessment except for good cause. Staff should inform defendants that financial obligations are due on the day of sentencing. Defendants and other persons who owe fines and assessments and who indicate an inability to pay on the sentencing date should be referred to the judge to personally request time to pay.

The court should set guidelines for what constitutes good cause and what information is needed to justify the granting of time payments. The definition of good cause and the basis for determining need may be different, depending on the type of case and debt. For instance, a defendant should be required to provide financial information at sentence to justify time payments. Reimbursements for childcare, however, are obligations that accrue over time. The court may require that the debtor (usually a parent) periodically update their financial status information.

Payment policies should also outline how the debtor must make a request for time to pay, what information must be provided, and the consequences of non-compliance. This may involve developing a payment agreement specifying payment dates and amounts. The consequences of failure to comply should be defined in policy and provided in writing to the debtor.

Information to be Provided to the Court

The court should specify what information must be provided to the court when installment or deferred payment is allowed and under what circumstances. For instance, the court should request a social security number from the defendant requesting time to pay on a traffic case, but request more complete information, such as banking and employment information, for larger debts. If the court requires a financial statement to be prepared, court policy should specify how and when this information is collected.

Some options to consider are:

- Including a financial profile in the pretrial screening process

- Including a financial profile as part of the probation pre-sentence process
- Having a financial profile completed prior to court appearance for those persons who anticipate requesting additional time.

Payment Types

The court should identify the types of payment allowed (cash, personal check, credit card) for various types of assessments. Policy should identify the circumstances in which third party payments may be made. If the court has special procedures for debtors with prior payment problems (i.e., NSF checks, late payments) this should be included in the policy.

Minimum Payment, Number of Payments, Maximum Period

The court should establish a policy for the minimum payment amount to be accepted, allowable payment periods (weeks, months), and the maximum period allowed. These policies may vary according to the total owed or the type of case. For instance, the court may adopt a policy that prohibits multiple payments for civil infractions, or payments that are less than a certain amount per payment.

Provide Written Notification of Amounts Due and Due Dates to the Debtor

The most effective agreements contain specific payment amounts and dates. The court's policy should indicate how far in advance the court is to be notified when the debtor will miss a payment. The debtor should be required to appear in court or at the clerk's office when requesting an extension and, if necessary, update their financial information. These requirements should be in writing and included on the payment plan information provided to the debtor. The phone number or person to contact regarding non-payment should also be included. The court may consider establishing a show cause docket that deals specifically with payment issues.

Payment Agreement

The court should provide the debtor with a copy of their payment agreement. The payment agreement should set forth all requirements of the payment agreement. It should also provide procedures to follow regarding inability to make a payment and changes in personal information or financial status. The policy should address how and when staff will provide this information.

Under/Over Payment

On occasion, the court will receive payments that are over or under the amount due. If an overpayment is received, policy should address:

- Application of overpayment to other debts or debts that are not yet due.
- Minimum amount at which the court will refund the excess amount.
- Procedures for notification of the debtor.
- If payment is by check, the period of time to wait for the check to clear before issuing a refund.

When an underpayment is received, the court should determine under what circumstances enforcement action would be taken. This may depend on the amount of the underpayment. For instance, for small amounts it may be more economical to send a notice only or to wait until the next payment period passes before taking full enforcement action.

Civil and Probate Filing Fees

If a party requests a waiver of filing fees, court policy should provide guidance for litigants and staff regarding the financial information that must be furnished to the court to support the request for waiver.

ENFORCEMENT

Progressive Sanctions for Non-Compliance

Experience has demonstrated that applying timely and progressively severe sanctions for failure to comply with payment orders is the most cost-effective approach for collections. The court should establish enforcement timelines that specify the progressive sanctions taken for failure to pay various types of assessments. The timeline should specify the actions to be taken, when they will be taken, and any additional assessments that will be imposed at each step.

The following table is provided as an example of an enforcement timeline. In this case the court has established separate timelines for each case type, as well as a distinction between misdemeanor cases with payments under \$50 versus those with an outstanding debt of \$50 or more. The timeline table specifies the number of days past the due date that action is taken and the additional penalties assessed at each step. If the court uses an outside collection agency, this information should be included in the timeline.

Table 1: *Sample Enforcement Timeline*

Type of Assessment	Default Judgment		Late Notice	FAC/FCJ	Show Cause	Bench Warrant		Tax Intercept		Collection Agency
	Days	\$	Days	Days	Days	Days		Days	%	Days
Traffic CI	+1	\$10	+28	+14				+56	20%	
Traffic Misd.			+28	+14	n/a			+56	20%	
Misd. < \$50			+7		+21	FTA/ FCJ				180
Misd. \$50+			+7		+21	FTA/ FCJ		+56	20%	

Financial Penalties as Condition of Probation, Responsibility of Probation Department

When a defendant is placed on probation and assessed fines, costs, or restitution, the role of the probation department should be clearly defined. Either the probation officers should monitor payments or the clerk's office should monitor them and provide information to the probation department. The policy should define under what circumstances the probation department will request a show cause or violation of probation warrant when a payment is missed and how often this will occur. Probation officers should check payment status sufficiently in advance of the end of the probation period so that enforcement action can be taken prior to discharge.

NSF Policy

Court policy for non-sufficient funds checks should include:

- Reinstatement of the action to the pre-payment status
- Assessment of NSF fee
- Notice to the debtor

- Enforcement through the prosecutor

Application of Bond

Policies for application of outstanding bond should be stated, including application to financial obligations and costs, disposition of third party bonds, and forfeiture procedures. The court may also adopt policies that include setting cash bond amounts on bench warrants that are equal to the total outstanding debt.

ADMINISTRATION

Entry of Payment Information.

Payment information should be entered into the accounting system as soon as possible. The court should specify procedures for staff to follow when entering payment information, including:

- Financial history information
- Correction of inaccurate balances
- Maintenance of records, etc.
- Processing of mail payments, logs
- Payments over/under amount due

Application of Payments to Multiple Debts

The court should be prepared to accept payments for multiple debts and should establish a policy for the application of payments that defines the priority for application of payments. For example, the court may adopt a policy of applying a payment to the oldest case first, or to cases where restitution is due (statutory requirements for application of payments should be followed). Local courts are encouraged to collaborate on collections and develop procedures and/or systems for sharing debtor and account information.

Tracking Partial Payment Plans/Account Review

The court should establish time frames for monitoring accounts and review of delinquent accounts. In automated courts, the timelines may be built into the court financial system programs and reports. In manual systems, the policy should describe procedures for entering payment information, payment tracking systems, review of outstanding assessments, notification, and enforcement.

Duties of Staff

The coordination of collection activities requires that staff clearly understand their responsibilities, and the relationship of their work to the collections process as a whole. The court should specify in writing the various responsibilities of staff in the collections process to ensure consistency and compliance. The following are examples of issues that may need to be addressed:

Probation

- Monitoring accounts
- Violation of probation for failure to pay
- Financial screening and payment recommendations as part of the PSI

- Early discharge
- Determination of restitution

Clerk

- Completion of wage assignment agreement
- Monitoring accounts
- Timeliness of entry of financial data
- Authority for determining payment terms and granting extensions

Magistrates/Referee

- Setting payment terms in accordance with guidelines established by the chief judge

Cashier

- Application of payments to multiple debts
- Under/over payments

Collections Officer

- Collection of financial information
- Monitoring accounts
- Authority for granting extensions, installment payments

The attachment entitled *Sample Policy Format* and the related flow chart is provided as an example of a policy format. This format specifies the procedures and persons responsible for the particular collection activity; in this case, the conversion of fines to community service.

Alternative Sanctions

The court may establish a standard schedule for alternative sanctions when a defendant is deemed to be indigent. Policies should include criteria for determining indigence and specify any financial information that is provided to the court to support the claim. The court may further develop a chart for converting the outstanding debt to community service or other sanctions.

Reports and Evaluation

All relevant reports relating to collections should be documented, including directions for their use and frequency of generation. Courts are encouraged to set collections goals and to develop appropriate reporting mechanisms for monitoring progress.

DISCHARGE OF DEBT

Write-Off Policy, Procedures

A write-off policy establishes criteria and procedures for writing off debts, which are not collectible. Write-off is an *administrative* procedure to remove a debt from the list of amounts

the court can expect to collect. Courts are encouraged to adopt the SCAO Model Write-Off Policy included with this document.

Waiver or Suspension of Debt

In certain cases, circumstances may warrant the partial or complete waiver or suspension of a debt, which is a **judicial** action to forgive the debt. Examples of situations when debt may be waived or suspended include: the debtor is indigent, the debtor successfully disputes the validity of an assessment, or the court imposes alternative sanctions. Debts that may warrant such action are not written off. The assigned judicial officer should order in writing or on the court record the waiver or suspension of debt. The court should have established procedures for debtors to follow in petitioning the court for relief and provide any information necessary to support their claim. Court policy should specify how the waiver of a debt is recorded in the court record and include audit controls to prevent unauthorized reduction of debt by court employees.

Amounts owed on cases may not be waived or suspended through administrative order or without notice to intended recipients of amounts owed.

Incarceration, Deferral of Obligation, Release

When a debtor is incarcerated, the financial obligation may be suspended until the debtor is released. Court policy should specify how the debtor's status would be monitored, the debtor's obligation to inform the court of his/her release, and how long after release the obligation will be re-activated.

Bankruptcy Proceedings – Stay of Obligation

When the court is notified of bankruptcy proceedings against a debtor, procedures should specify when to place debts in suspended status pending the outcome.

CONVERSION OF FINANCIAL OBLIGATIONS TO COMMUNITY SERVICE

PURPOSE OF POLICY:

To establish procedures and guidelines for post-sentence conversion of financial obligations to community service when granted by the court due to indigence.

RESPONSIBILITY:

Court recorder or courtroom clerk; deputy court clerk (criminal division); division bookkeeper.

PROCEDURE:

Courtroom:

1. Prior to calling the case, have the bailiff provide the defendant with a Financial Statement form and clipboard. Instruct the defendant to complete and sign the form. Once completed, insert the Financial Statement in the court file for the judge.
2. Upon order of the judge converting outstanding financial obligations to community service, enter information on the signed Judgment and Sentence indicating the amount of penalty waived and the hours or days of community service ordered. Be sure that a completion date is indicated for the community service. Provide a copy to the defendant and one to the transport officer if the defendant is in custody. Return the case file with the original Judgment and Sentence to the clerk's office.

Clerk's Office:

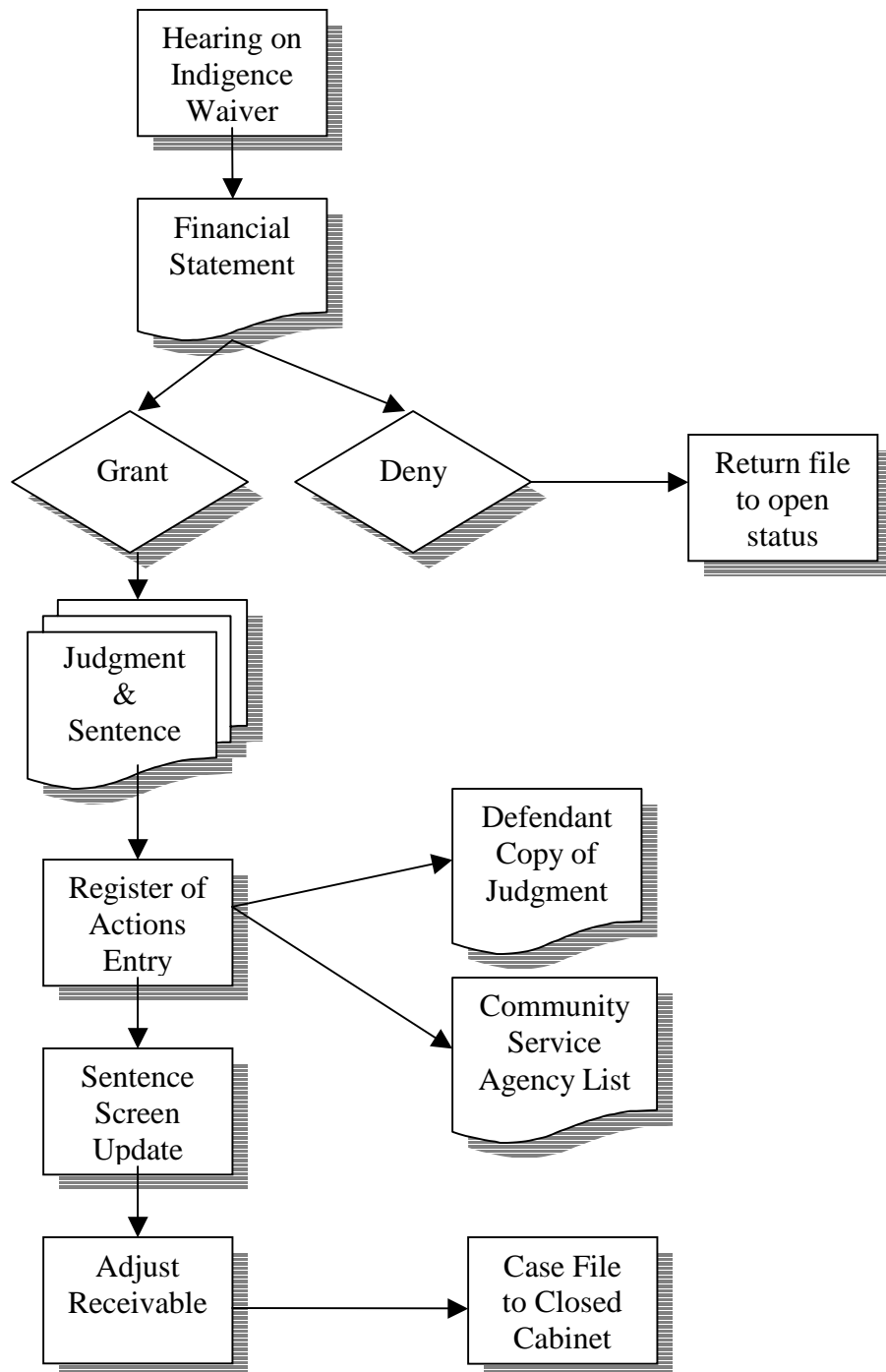
1. Check the court file and the Judgment and Sentence form for completeness.
2. Verify that the defendant has received a copy of the Judgment and Sentence and understands the conditions and terms. Provide the defendant with the list of eligible volunteer agencies and activities. Retain the court copy of the Judgment and Sentence in the court file.
3. Enter the court action into the register of actions, indicating hours or days of community service and any special conditions. Indicate the amount of financial obligations waived. Post this information to the sentence screen.
4. In the financial system, suspend the balance of financial obligations for the case as ordered by the judge. Use the action code for "waiver due to indigence."
5. Return the file to the closed filing cabinet.

Bookkeeper's Desk:

1. At month-end, verify all entries appearing on the Negative Adjustments Report to verify that the proper adjustment was made to the receivable record by verifying the adjustment against the original court order.

*****SAMPLE COLLECTIONS PROCESS FLOWCHART*****

**PROCEDURE FOR CONVERSION OF FINANCIAL OBLIGATIONS
TO COMMUNITY SERVICE**



SCAO MODEL WRITE-OFF POLICY

1. At or near the end of every fiscal year, the court administrator will review all debts to determine which are eligible for write-off.

A. Except as provided in 1.B. below, uncollectible debts are eligible for write-off if they have aged according to the following schedule:

- Traffic civil infractions - 2 years after assessment
- Non-traffic civil infractions - 2 years after assessment
- Criminal cases - 3 years after assessment, probation discharge, or release from incarceration, whichever occurs last

Juvenile cases:

- Traffic - 2 years after jurisdiction ends
- Delinquency - 3 years after jurisdiction ends
- Child protective proceedings - 3 years after jurisdiction ends

The court shall not rescind any bench warrants issued for nonpayment of debts that are written off under this subsection.

B. Debts shall be eligible for write-off regardless of payment history, contact with debtor, and age of debt in the following instances:

- i. the debtor is deceased
- ii. the debt is discharged in bankruptcy
- iii. the estimated costs of collecting the debt exceed 1.5 times the amount of the debt

The court shall rescind any bench warrants issued for nonpayment of debts that are written off under this subsection.

2. Court staff shall provide the following information to the court administrator to support the recommendation for write-off: debtor name, case number, date of judgment, amount assessed, amount unpaid, efforts undertaken to collect the debt, and reason for write-off.
3. The court administrator shall review the debts recommended for write-off and determine those to approve. The court administrator may write-off some debts owed by a debtor and not others. The case files and automated information system shall be updated to indicate the date the debt(s) were written off.
4. The court must be able to accept payment for all debts that are written off. If a partial payment is accepted on a debt that has been written off, the debt shall be returned to active status and appropriate collection efforts resumed.
5. Debts owed by prisoners who have been sentenced to more than 5 years in prison and who have not made payments during the first 12 months of their term of imprisonment shall be written off. As part of the annual write-off process, the court administrator shall

review debts written off under this section to determine whether they should be returned to active status.

6. If circumstances change to allow collection efforts to resume, a written-off debt shall be reinstated to active status.